

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

In re

HUDIE JOYCE WALKER,

on Habeas Corpus.

B190637

(Los Angeles County
Super. Ct. No. KA004088)

ORDER MODIFYING OPINION
NO CHANGE IN JUDGMENT

THE COURT:

It is ordered that the opinion filed herein on February 5, 2007 be modified as follows:

1. On page 6 under the heading “b. The trial court’s instructions,” the second sentence beginning with “However, although the court included in its general instruction” is deleted, as is the balance of that paragraph continuing to page 7, and the following is inserted in its place, including footnotes, which will not require renumbering of subsequent footnotes:

The court’s general instruction defining voluntary manslaughter included a reference to both sudden quarrel/heat of passion and imperfect self-defense (see CALJIC No. 8.40 [distinguishing murder and voluntary manslaughter]);⁴ and it provided several additional instructions regarding sudden quarrel, heat of passion and provocation (see CALJIC Nos. 8.42, 8.43, 8.44), as well as explaining the imperfect-self-defense theory of voluntary manslaughter. In particular, the court

properly instructed the jury that fear alone is not sufficient to constitute the heat of passion referred to in the law of manslaughter (see CALJIC No. 8.44), and further advised the jury that an actual, subjective belief in the need to defend oneself negates malice even if a reasonable person in the same situation seeing and knowing the same facts would not have believed there existed any imminent peril to life (CALJIC No. 5.17).⁵

⁴ The court instructed the jury, “Every person who unlawfully kills another human being without malice aforethought but with an intent to kill is guilty of voluntary manslaughter in violation of section 192 of the Penal Code. There is no malice aforethought if the killing occurred upon a sudden quarrel or heat of passion or in the honest but unreasonable belief in the necessity to defend one’s self against imminent peril to life or great bodily injury.”

⁵ At the time of trial CALJIC No. 5.17 provided, “A person who kills another person in the honest but unreasonable belief in the necessity to defend against imminent peril to life or great bodily injury kills unlawfully, but does not harbor malice aforethought and cannot be found guilty of murder. This would be so even though a reasonable man in the same situation and knowing the same facts would not have had the same belief.” (CALJIC No. 5.17 (Jan. 1987 rev.) (4th ed. 1979); see *People v. Rogers* (2006) 39 Cal.4th 826, 882-883, fn. 29.)

2. On page 22, on the fourth line, the term “limited” is deleted.

There is no change in the judgment.

PERLUSS, P. J.

JOHNSON, J.